

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)	
)	
Availability of INTELSAT)	IB Docket No. 00-91
Space Segment Capacity to)	
Users and Service Providers)	
Seeking to Access)	
INTELSAT Directly)	
To: The Commission)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REQUEST OF COMSAT CORPORATION
FOR THE COMMISSION TO RETURN WITHOUT CONSIDERATION
CERTAIN MATERIALS VOLUNTARILY SUBMITTED
UNDER A REQUEST FOR CONFIDENTIAL TREATMENT**

Pursuant to Section 0.459(e) of the Commission's rules, COMSAT Corporation ("COMSAT"), by its attorneys, hereby requests the return of certain confidential materials voluntarily submitted in response to the Commission's *Notice of Proposed Rulemaking* ("Capacity NPRM") in the above-captioned proceeding.¹ As a matter of practice and policy, the Commission ordinarily grants requests for the return of materials that have been voluntarily submitted under a request for confidentiality. Because the public interest would not be harmed by the return to COMSAT of the voluntarily submitted materials discussed herein, those materials should be returned pursuant to the Commission's ordinary practice.

¹ *Notice of Proposed Rulemaking, In re Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, FCC 00-186, IB Docket No. 00-91 (rel. May 24, 2000) ("Capacity NPRM").

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BACKGROUND

The *Capacity NPRM*, issued on May 24, 2000, initiated a rulemaking proceeding to determine whether sufficient opportunity exists for U.S. carriers and users to obtain direct access to INTELSAT. The *Capacity NPRM* designated COMSAT as “a party respondent in this proceeding, and . . . require[d] Comsat to provide [certain] information concerning existing and future capacity in the INTELSAT system. . . .” *Capacity NPRM*, ¶ 4.

Specifically, COMSAT was ordered to obtain from INTELSAT, and to provide to the Commission, certain detailed technical information concerning the uncommitted INTELSAT space segment capacity available for service to and from North America on existing and planned satellites. *Id.* ¶ 20. This data was to be provided in a specific format set forth in Appendix A to the *Capacity NPRM*. *Id.* In addition, COMSAT was ordered to “provide on a satellite-by-satellite basis information as to capacity that it: (1) now has in service; (2) holds but does not have in service; (3) holds as a guaranteed reservation; and (4) holds as a first refusal reservation.” *Id.* ¶ 22. In providing the latter information, COMSAT was directed to “indicate the extent to which the capacity it holds or has reserved on future satellites is intended to satisfy existing long-term contracts that will continue when future capacity becomes available[;] . . . identify capacity on future satellites for which it has no explicit customer requirements[; and] . . . indicate the extent to which it holds or has capacity reservations in anticipation of renewal of existing long-term contracts.” *Id.* ¶ 22. All of this information was to be provided in a specific format set forth in Appendix B to the *Capacity NPRM*. *Id.* Recognizing that much of this information would be “commercially sensitive,” the Commission invited COMSAT to request confidential treatment of the submitted materials under Section 0.459 of the Commission’s Rules. *Id.*

On June 23, 2000, COMSAT complied in full with the Commission's orders by filing all of the requested information, in the specified formats. *See Comments of Comsat Corporation*, IB Docket No. 00-91 (filed June 23, 2000). Pursuant to the Commission's invitation, COMSAT requested that the capacity data submitted on the required Appendix A and Appendix B not be made routinely available for public inspection. *See Request For Confidential Treatment In The Matter of Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, IB Docket No. 00-91 (filed June 23, 2000) ("*Confidentiality Request Letter*").

At the same time, and under the same *Confidentiality Request Letter*, COMSAT also voluntarily submitted a "Confidential Appendix C," which contained two full-page illustrated graphs. These graphs reflect certain financial data and pricing data not specifically requested by the Commission. At the time of filing, COMSAT was optimistic that the material filed under the *Confidentiality Request Letter* would not be made available to COMSAT's customers or competitors.

Subsequently, in an *Order Adopting Protective Order* dated July 5, 2000, the FCC's International Bureau purported to "grant COMSAT's request for confidentiality." *Order Adopting Protective Order*, DA 00-1428, IB Docket No. 00-91, ¶ 5 (rel. July 5, 2000). However, the Bureau's nominal "grant" of confidentiality in fact requires COMSAT to disclose the information filed under the *Confidentiality Request Letter* to virtually anyone claiming to be interested in commenting on it. *See id.* ¶ 5 ("Parties seeking access to the information in the unredacted comments may have such access. . . ."); *see also Protective Order*, ¶ 7.a-7.b, *attached to Order Adopting Protective Order* (ordering COMSAT to supply its "confidential" Appendices to various representatives of "interested parties," including in-house and outside counsel,

“technical or other expert[s],” paralegals, clerical staff, and “other employees”); *id.* ¶ 7.c (ordering COMSAT to also supply its “confidential” Appendices to “[a]ny person designated by the Commission,” including persons not participating in the *Capacity NPRM* rulemaking proceeding); *id.* ¶ 9 (permitting all of these people to make additional copies of the “confidential” Appendices). Virtually all of COMSAT’s current and future customers and competitors are thus now eligible to obtain copies of all of the materials filed by COMSAT under the *Confidentiality Request Letter*.²

Within one day of the release of the *Order Adopting Protective Order*, COMSAT received formal requests for copies of all of the Confidential Appendices (including Appendix C) from no fewer than *seven* individual representatives of WorldCom, Inc. and Sprint Communications Company, L.P., plus two additional individuals jointly representing Cable & Wireless U.S.A., Inc. and ATC Teleports, Inc. In response, COMSAT has now furnished copies of Confidential Appendices A and B to each company or representative that has requested them.³ For the reasons discussed below, however, the Commission should return the two-page

² Although the *Order Adopting Protective Order* effectively denied in part COMSAT’s request for confidential treatment, the Commission did not notify COMSAT of the denial, either by telephone or in any writing other than the publicly released *Order Adopting Protective Order*. Compare 47 C.F.R. § 0.459(g) (“Notice of denial and of the time for seeking review or a judicial stay will be given by telephone, with follow-up notice in writing.”).

³ Copies of Confidential Appendix B—which contains COMSAT proprietary data—were furnished to all requesting entities on the same day the requests were received. Copies of Confidential Appendix A—which contains INTELSAT data—are being furnished to all requesting entities by hand delivery today, July 10, 2000. This slight delay occurred because COMSAT could not disclose INTELSAT’s proprietary data to third parties before consulting with INTELSAT to determine whether the International Bureau’s *Order Adopting Protective Order* dated July 5, 2000 would be appealed with respect to Confidential Appendix A. See 47 C.F.R. § 0.459(g).

Confidential Appendix C to COMSAT, and should clarify that COMSAT need not provide a copy of that Appendix to any entity requesting it.

ARGUMENT

The Commission's Rules expressly provide that when materials submitted under a confidentiality request letter "are submitted voluntarily (*i.e.*, absent any direction by the Commission), the person submitting them may request the Commission to return the materials without consideration if the request for confidentiality should be denied." 47 C.F.R. § 0.459(e). "In that event, the materials will ordinarily be returned. . . ." *Id.* "Only in the *unusual instance* where the public interest so requires will the materials be made available for public inspection." *Id.* (emphasis added).

Here, Confidential Appendix C satisfies all of the Commission's criteria for a return of submitted materials without consideration. Unlike the materials submitted by COMSAT in Confidential Appendices A and B, the information submitted in Confidential Appendix C was submitted voluntarily and absent any direction by the Commission. Subsequently, COMSAT's *Confidentiality Request Letter* was effectively denied in part. *See* pages 2-3, *supra* (discussing practical effect of International Bureau's *Order Adopting Protective Order*). Accordingly, the materials submitted in Confidential Appendix C should be returned, consistent with the Commission's "ordinar[y]" procedure. 47 C.F.R. § 0.459(e); *see also, e.g. Sandab Communications Limited Partnership II*, 11 FCC Rcd 11790, ¶ 7(1996) (returning materials submitted under seal after denying request that the materials be considered on a confidential basis); *Liberty Cable Co., Inc. v. Courtroom Television Network*, 9 FCC Rcd 4035, ¶ 2 n.2 (Cable Servs. Bur. 1994) (same).

No “unusual instance[s]” require that Confidential Appendix C be made available for public inspection. *Id.* Although COMSAT’s designation as “a party respondent in this proceeding,” *Capacity NPRM*, ¶ 4, is in some respects somewhat unusual, COMSAT’s provision of Confidential Appendix C was undertaken independently of its “party respondent” role. Specifically, unlike the information presented in Confidential Appendices A and B, the Commission did not request the information presented in Confidential Appendix C. Accordingly, COMSAT was not acting as a “party respondent” when it sought to furnish Confidential Appendix C to the Commission under seal.

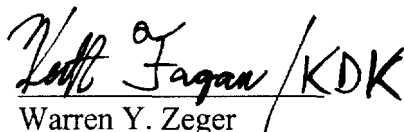
Similarly, the public interest in no way requires that the materials in Confidential Appendix C be made available for public inspection. *Cf.* 47 C.F.R. § 0.459(e). Although the Commission made detailed and extensive requests for certain confidential COMSAT and INTELSAT data in the *Capacity NPRM*, the particular data set forth in Confidential Appendix C was never requested. *See Capacity NPRM*, ¶¶ 20, 22. Accordingly, in contrast with the data set forth in Confidential Appendices A and B, the Commission has never indicated that the data set forth in Confidential Appendix C is of any significance whatsoever to the public interest.

Finally, return of the requested materials to COMSAT would not prejudice other participants in the *Capacity NPRM*. Should Confidential Appendix C be returned, COMSAT understands that the Commission would not consider the information contained therein. Accordingly, because COMSAT would willingly forego any reliance on that material, no other participant in the *Capacity NPRM* rulemaking proceeding would be prejudiced by its return.

CONCLUSION

For the foregoing reasons, the Commission should return the two-page Confidential Appendix C to COMSAT, and should clarify that COMSAT need not provide a copy of that Appendix to any entity requesting it.

Respectfully submitted,

Handwritten signature of Warren Y. Zeger in black ink, followed by a forward slash and the letters 'KDK'.

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July 10, 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing comments of

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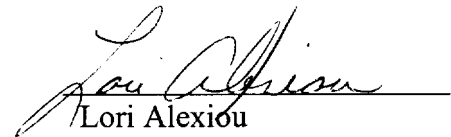
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